

AUTO COLLISION REPAIR LICENSING ADVISORY BOARD

*****SPECIAL MEETING*****

MEETING MINUTES FOR February 13, 2009

Members present: Dave Reynolds, Chairman

Richard Bernstein, Legal Counsel – DBR

Corporal Dave Doucet, Rhode Island State Police

Gerald Galleshaw, Representing the People

Paul Kiernan, Paul Masse

Dennis Gamba, Cranston Collision

Members absent: Dan Coleman, Auto Glass Industry

Charles Nystedt, MetLife Home

Others present: Maria D'Alessandro, Associate Director

Stephen Zubiago, PCI

Frank O'Brien, PCI

Neena Sinha Savage, Chief of Legal Services

Kim Precious, Implementation Aide

Larry Alan, Nationwide Mutual

Jina Petrarca-Karampetsos, Providence Auto Body

Randy Bottella, Reliable Collision

Patrick Quinlin, ABARI

Andrew Wandyes, Action Auto Collision

Richard Leone, Nick's Auto Body

Michael Horan, RI Towing Association

Jim Robbins, RI Towing Association

Anthony Victoria, Auto Service Auto Body

Albert Guercia, Dean Auto Collision

Raymond Badway, Dean Auto Collision

MEETING CALLED TO ORDER AT 9:05 AM

RB: This meeting was called by the Director and the Chairman because of an assertion that Section 6 of the Storage Regulation has unintended consequences. We will limit this meeting to discuss whether or not as written, Section 6 of the regulation, correctly reflects the recommendation of the sub-committee and board. What we need to do today is suggest some word changes that would return the regulation to its intended wording. If wording is changed there will be a public hearing and the regulation will then be amended.

NSS: Sub-committee members present who drafted the initial recommendation identified as: Randy Bottella, Jina Petrarca-Karampetsos, and Dennis Gamba. Not present: Charles Nystedt. Has anyone on the Board or sub-committee had any conversations with Mr. Nystedt?

DR: Informed Mr. Nystedt that today's meeting is a reflection of past meetings that took place on storage regulations.

NSS: In a letter dated August 8, 2006 the board unanimously submitted a proposed regulation recommended by the sub-committee. One of the documents that I handed out is the post hearing revision with tracked changes. If you look at Section 6, which is on page 4, the double strikeouts are everything that was changed after the hearing and everything in bold is what was put into the hearing. Those changes came about specifically as a result of comments that I have also passed out from the AIA. What AIA said is that Section 6 seemed to apply to two categories of totaled vehicles. Those vehicles - That were totaled as the result of an initial appraisal and those vehicles that were totaled as the result of a supplemental appraisal after repairs were begun. The original regulation had a seven-day provision and two separate categories of storage rates, and if you look on the marked up draft, you will see that. If you look at page two of the red-lined draft (that section which was previously section 1) It states that rates (A) would be in effect for the first 7 days and rates (B) will be in effect after that. The recommendation that came from the board deleted that distinction between the first seven days and the next seven days. For the record, I was not involved in any of the board or sub-committee meetings. I just had the written recommendations to interpret and furthermore, our long time Chief of Auto Body, who did participate in the board meetings, retired in June.

With that institutional knowledge gone, I was left to interpret what was presented. Immediately after the regulation was filed last Friday, the Department received several phone calls informing it that amendments to Section 6 basically deleted what was the

understanding of the board, the sub-committee, and the status quo, which allows the imposition of storage fees immediately upon a vehicle arriving at an auto body shop. The purpose of this meeting is to confirm that the amendments to this regulation were not adopted as recommended, and to hear from the sub-committee and the board members. I will take comments and then the Department would have to confer and take whatever action is necessary.

RBottella: If any changes are made to what is currently posted, will there have to be another hearing?

NSS: I'd rather focus on the substance that was intended, and discuss the process later.

JPK: Being a member of the sub-committee, I have no recollections at all of any discussion limiting the status quo. Once a vehicle arrives at a shop, storage fees are allowed. The extent that we do limit them is properly evidenced in the rest of the regulation. There is nothing questionable to a totaled vehicle, it comes in and you see it is totaled. Storage is charged from day one as it is now. The insurance company notifies the owner that their vehicle is totaled. There are already regulations and rules established for that system.

NSS: If you look at how section 6 was presented, sub-sections (f) and (g), what was the purpose?

JPK: That section applies to the rule in which repairs are required. I don't know how they ended up in Section 6, but that language is in Section 5. It applies if a vehicle is repaired and the owner does not come to pick up the car. You can't charge storage from the day you claim the vehicle was ready. To protect the consumer, you have to send a certified mail letter to the owner saying your car is ready and if you don't come and get it within (7) seven days, we are going to start charging storage charges on the (8) eighth day. Not for total loss. It seems that same language, was transposed in section 6, where it is not typical.

NSS: You mean transposed by the sub-committee and the board?

JPK: I mean in the final proposal that the board voted on does not have sections f and g. There was a concern by the department that lien-holders be notified.

NSS: I am looking at the August 8th 2006 letter.

DR: The August 8th 2006 letter is the letter, but the attached regulations that went up with that letter are not the regulations I sent with that letter.

RBottella: We were asked by the Department to contact PUC because someone brought up non-consensual tows.

NSS: Are there auto body shops that are on non-consensual tow lists.

R.Bottella: Yes there are but they are licensed specifically by PUC.

NSS: That's the issue. If there are auto body shops that are on non-consensual tow lists, then that implicates both the PUC and DBR.

JPK: The understanding was that DBR's authority would come into play in most circumstances when an authorization for repair was signed. Under PUC, that car is towed non-consensually to that facility which holds two licenses. The PUC license and all of the regulations of the PUC are in effect until the owner actually physically presents himself to that facility and signs an authorization to repair under their auto body license. Once they do that, DBR's regulations would apply but not until then. So I think the discussion was that really the issue doesn't arise because it is a separate issue.

DR: I think we wound up with a second hearing because there was never a redlined version to tell if there were any changes. Then when it got to a second hearing, I was under the impression that what we had sent up was what we were talking about.

NSS: The redlined version was out prior to the second hearing.

RBottella: We were told that it was nothing more than a proper

notification process.

NSS: The proposed regulation even without red lining has sections e & f.

RB: The record should reflect that the hearing officer operated in the utmost good faith and she was trying to make sense of what she had. AIA must have read it because they sent questions in about it. I think in the interest of time, the board needs to quickly determine whether or not its intent was to not allow storage rates under section 6 until the eighth day.

SZ: I just want to throw out for consideration that maybe Attorney Savage, as hearing officer, shouldn't be here for this deliberation. If I understand the hearing officer role correctly, this board is going to make a recommendation and it goes to the hearing officer for review and I'm not sure that she should participate in this discussion right now.

NSS: On what legal grounds?

SZ: My understanding is that a recommendation is brought to the hearing officer and the hearing officer considers that. While I don't have a statute or a regulation to point you to, I am concerned that we are changing the way we have always done this in the past, which is these types of boards sit at the public deliberation and then send it to

DBR, and DBR makes its own independent review of that information and decides to promulgate the reg. Because the conversation here has been based on the premise that the board is going to say something and DBR is going to adopt it, and that is not how it works.

RB: Neena, if I may, and just out of an abundance of caution, I would suggest you stand outside the door, and as soon as the board is polled, we can go to the next step.

The Chair is asking board members if they believe that the intent of section 6 may have been lost in the translation. If the majority of the board believes so, then my recommendation would be that the sub-committee reconvene very quickly to put in some suggested language that would restore the intent, and then we would talk about process later.

GG: Based on the interpretation of what was sent up and what came out, the interpretation was wrong.

DD: From what I heard this morning, clearly there was an issue between what was enacted and what was proposed.

RB: I concur. I believe the hearing officer acted with the information that she had, but to that extent, there may have unintended consequences.

DG: I thought everyone was on the same page and bottom line is how it ended up this way. I understand it is nobody's fault, but maybe there should have been a process as to where it actually came back down to us again before it came to this.

PK: I believe it was miss-interpreted.

DR: I say yes.

RB: I would make a motion to that the sub-committee reconvene and revise section 6 and make any other revisions necessary to correctly reflect the intent and propose revised language to the board. In light of the fact of this regulation could be in effect shortly, I urge that it be done ASAP.

DR: Second the motion. All in favor.

RB: I urge everybody to thoroughly read everything that is proposed when we have public hearings.

PQ: I did not receive advanced copy of regulation.

RB: You must be on the interested parties list. Send me an e-mail making sure you want to be on interested parties list.

LA: Maybe there can be a discussion within the department, so we get consistent notice.

SZ: This regulation becomes effective 2/26?

JPK: I am hearing certain companies have been instructing their companies not to pay the storage.

PQ: I would make a suggestion that the board get together very quickly and get this done and request a stay to the implementation to the regulation.

Motion that the board hereby request that the hearing officer stay the implementation of the regulations pending the adoption of the revised language. Seconded RB. All in favor.

Motion to adjourn the meeting. Seconded . All in Favor.